



Before: Judge Francesco Buffa

Registry: Nairobi

Registrar: Abena Kwakye-Berko

GUIMARAES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON CASE MANAGEMENT

Counsel for the Applicant:

Julia Kyung Min Lee, OSLA
Jason Biafore, OSLA

Counsel for the Respondent:

Nicole Wynn, AAS/OHR, UN Secretariat
Fatuma Mninde Silungwe, AAS/OHR, UN Secretariat

Introduction

1. The Applicant was a Movement Control Officer with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, (“MONUSCO”), Goma. On 22 July 2022, she filed an application contesting the decision to remove her from the position of Chief of Joint Movement Coordination Centre (“JMCC”) and to reassign her as Bonded Warehouse Supervisor.
2. The Tribunal issued Order No. 037 (NBI/2023) on 14 February 2023, on case management, in which potential witnesses were identified by the Tribunal and the parties were given directions with a view to preparing for an oral hearing of this matter.
3. On 27 February 2023, the Tribunal issued Order No. 055 (NBI/2023) on case management with notice for oral hearing in the UNDT Courtroom in Nairobi, from 27 March 2023 to 3 April 2023.
4. On 21 March 2021, the Applicant filed a motion seeking leave to adduce additional evidence under art. 18 (1) of the Dispute Tribunals Rules of Procedure.
5. On 23 March 2023, the Respondent filed a motion seeking leave to file additional documents.
6. On 24 March 2023, the Applicant submitted her Response to the Respondent’s motion for leave to file additional documents.
7. At the beginning of the hearing, the Applicant requested to revise the Order which set the positions of the parties in the examination of the witnesses and recalled her opposition to the admission of the documents filed by the Respondent in the said motion.
8. The Respondent’s motion and the Applicant’s response were then submitted by the Registry to the Judge for consideration.

Consideration

9. The Tribunal at the hearing rendered the following orders:

As to the Applicant's Motion dated 21 March 2023 to adduce as additional evidence the United Nations Ethics Office's Final Determination on the Applicant's request for protection against retaliation, considering the date of the document (20 March 2023) and the fact that the document is already in possession of the Respondent, the Tribunal determines that the motion is granted.

As per the issue concerning the position of the parties in the examination, the Tribunal is guided by the consideration of the specific topic of this dispute and the related burden of proof of the parties and their objective interests in adducing evidence to the Tribunal; therefore, the Tribunal confirms its Order No. 055 (NBI/2023).

As to the Respondent's motion of 23 March 2023 on additional evidence, having considered the objection raised by the Applicant on 24 March 2023 on their admissibility, the Tribunal notes that the motion is related to the admission of 115 documents, that the documents are not recent and that no reason was given of the very late production of them. The Tribunal is aware that the Applicant has the right to comment on these documents in a reasonable time and to produce contradicting documents weather necessary.

The Applicant is to submit her comments on the documents and any request to oppose other documents on or before Friday, 31 March 2023.

Given that the documents submitted by the Respondent cannot be used for the hearings, because their admission at this moment would interfere with the expeditious unfolding of the hearing, which would be contrary to art. 19 of the Rules of Procedures, the Respondent's motion is not granted for the moment; the Tribunal will assess the relevance of the documents at a later stage.

10. The Tribunal is aware that, in relation to the time needed for ruling on the admission of documents offered by the parties and to have them able to effectively prepare the final submission also considering the outcome of the said ruling, it is necessary to re-schedule the date for the closing final submissions to Tuesday, 4 April

2023 (date of the end of the deployment on site in Nairobi for this Judge) or, as an alternative solution (that can be accepted in consideration of the Counsel's personal constraints expressed to the Registry in the preliminary setting of the agenda of the hearing), having only final conclusion in writing in a longer deadline. Being proposed the choice between the two solutions to the parties, at the hearing they expressed preference for the second option and agreed on that.

11. The Registry invited the witness Ms. Yewande Odia to the hearing and received, on 27 March 2023, an email indicating: "I am on R and R " (Rest and Recuperation). Due to the non-appearance of this witness, the parties at the hearings requested to be allowed to ask questions in writing to the witness.

ORDERS

12. Parties are allowed, if they believe it necessary or useful, to ask questions in writing to Miss Yewande Odia and to submit and file the answers before 5 April 2023.

13. The Tribunal vacates its orders requiring the parties to give their oral submissions on 3 April 2023, as in Order number 055 (NBI/2023) and directs the parties to file written submission by 15 April 2023, being the remainder of Order confirmed.

(Signed)

Judge Francesco Buffa

Dated this 28th day of March 2023

Entered in the Register on this 28th day of March 2023

(Signed)

Eric Muli, Legal Officer, for
Abena Kwakye-Berko, Registrar, Nairobi